

D.P.U. 94-176-A

Petition of Stow Municipal Electric Department for a determination by the Department of Public Utilities of damages pursuant to St. 1898, c. 143, and G.L. c. 164, §§ 42 and 43.

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I. INTRODUCTION

On February 16, 1996, the Department of Public Utilities ("Department") issued an Order in Stow Municipal Electric Department, D.P.U. 94-176 (1996) ("Order") determining, among other things, the property to be included in Stow Municipal Electric Department's ("SMED") purchase of Hudson Light & Power Department's ("HL&PD") property, the price therefor, and the amount of severance damages to be paid by SMED to HL&PD. Order at 106. The Department further determined that the Order shall be applicable to a transaction completed within 180 days of the Order in compliance with G.L. c. 164, § 43.¹ On March 7, 1996, SMED and HL&PD each appealed the Department's Order to the Supreme Judicial Court ("SJC") pursuant to G.L. c. 25, § 5.

On March 13, 1996, HL&PD filed with the Department an emergency motion to stay enforcement of the Department's Order,

¹ According to G.L. c. 164, § 43,
If within thirty days after such determination has been made by the [D]epartment, the owner shall notify the town of its acceptance of the determination as made by the [D]epartment, and within a further period of thirty days shall tender good and sufficient deed of conveyance to the city or town clerk of the property required by the [D]epartment to be purchased, and shall then place said deed in escrow, the town shall have sixty days in which to accept or reject said tender, and if it accepts shall have a further period of sixty days in which to pay to the owner the price determined...

pending the resolution of the appeals of the Order before the SJC.

Citing an apparent conflict in the statutory scheme envisioned by G.L. c. 164, § 43, and G.L. c. 25, § 5, HL&PD argues generally that if the Department does not stay enforcement of its Order, HL&PD's appeal to the SJC would be rendered moot. On March 14, 1996, SMED filed a response to HL&PD's motion, arguing that the Department should either deny the request for a stay, based on the Department's lack of jurisdiction or, in the alternative, should condition the granting of any such stay upon HL&PD's tendering of a deed into escrow, as required by G.L. c. 164, § 43.

II. ANALYSIS AND FINDINGS

The Department is not persuaded by SMED's argument that the Department lacks jurisdiction to order a stay of a Department Order. See Cella, Administrative Law and Practice, § 1555 (Massachusetts Practice Series 1986). Where the consequences of adjudicatory decisions are far-reaching, or the immediate impact upon the parties in a novel and complex case is substantial, or significant legal issues are involved, an administrative agency can exercise its discretion to grant a stay of enforcement pending judicial review. Id., at 118, n.8. The Department has balanced the competing interests in this matter. Given the Department's interest in the enforcement of the Order, and for the reasons stated in HL&PD's motion, and given the potential for other

adverse impacts, for example, on HL&PD's customers located outside of the Town of Hudson and the Town of Stow, the Department finds that a stay of the Order is warranted. In granting the relief requested, the Department deems its determination under G.L. c. 164, § 43 stayed. Therefore, any of the statutory requirements under G.L. c. 164, § 43 that follow the Department's determination, including the requirement to place the deed in escrow, would apply only when the stay is lifted, that is, after the resolution of the pending appeals before the SJC.

Accordingly, HL&PD's motion to stay enforcement of the Department's Order is granted until the appeals currently pending before the SJC are resolved.

By Order of the Department,

John B. Howe, Chairman

Mary Clark Webster, Commissioner

Janet Gail Besser, Commissioner